



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2004

Mr. Todd Fitts  
City Attorney  
City of Marshall  
P.O. Box 698  
Marshall, Texas 75671-0698

OR2004-3588

Dear Mr. Fitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200565.

The City of Marshall (the "city") received a request from two different requestors for invoices and billing records of attorneys, engineering firms, or other consultants relating to the city's application to the Texas Commission on Environmental Quality (the "TCEQ") to amend its certificate of adjudication. You claim that some of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information is subject to section 552.022 of the Government Code, which provides, in pertinent part:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The submitted information consists of (1) invoices to the city for engineering services and (2) attorney fee bills of the law firm representing the city. The invoices for engineering services are subject to section 552.022(a)(3), and the attorney fee bills are subject to section 552.022(a)(16). You do not claim that this information is confidential under the attorney-client privilege, but you assert that the submitted information is excepted under section 552.103. Section 552.103 is a discretionary exception under the Public Information Act (the "Act"). Discretionary exceptions under the Act are intended to protect only the interests of the governmental body, as distinct from exceptions that are intended to protect information deemed confidential by law or the interests of third parties; therefore, discretionary exceptions do not constitute "other law" that makes information confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, section 552.103, even if applicable to the submitted information, is not "other law" that makes information confidential for purposes of section 552.022. Therefore, the submitted information is not excepted under section 552.103, and must be released to the requestors under section 552.022.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

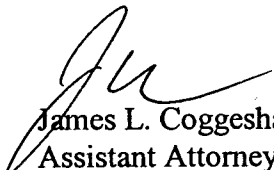
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 200565

Enc. Submitted documents

c: Mr. Jack Canson  
3109 Victory Drive  
Marshall, Texas 75672  
(w/o enclosures)

Mr. Mike Elswick  
Marshall News Messenger  
309 East Austin Street  
Marshall, Texas 75670  
(w/o enclosures)